

Local 172, Sheet Metal Workers International Association, AFL-CIO and The Wing Company, Division of Wing Industries, Inc. and Local 427, International Union of Electrical, Radio and Machine Workers, AFL-CIO. Case 22-CD-376

August 31, 1982

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by The Wing Company, Division of Wing Industries, Inc., herein called the Employer, alleging that Local 172, Sheet Metal Workers International Association, AFL-CIO, herein called Sheet Metal Workers, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to its members rather than to employees represented by Local 427, International Union of Electrical, Radio and Machine Workers, AFL-CIO, herein called Electrical Workers.

Pursuant to notice, a hearing was held before Hearing Officer John Mansfield on April 19, 1982. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, a New Jersey corporation, is engaged in the manufacture and sales of industrial heating and ventilating equipment at its Cranford, New Jersey, facility. During the preceding 12 months, the Employer in the course and conduct of its business operations derived gross revenues in excess of \$50,000 from the sales of its products directly to customers located outside the State of New Jersey. Accordingly, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and

(7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that the Sheet Metal Workers and the Electrical Workers are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. Background and Facts of the Dispute

During the summer of 1980 the Employer decided to begin the in-house production of finned tubes, a necessary component of many of its heating and ventilating products. Finned tubes consist of hollow, copper, U-shaped tubing on which flat pieces of aluminum are attached. The machinery needed to manufacture finned tubes arrived at the Employer's facility during August or September 1981. Up to this time the Employer purchased finned tubes from an independent manufacturer of such equipment.

Prior to the October 1981 startup of finned tube production, the Employer discussed the assignment of the work with both the Sheet Metal Workers and the Electrical Workers. Both Unions claimed the work and could not agree between themselves as to whose members should perform the new work. Therefore the Employer decided to assign the finned tube manufacturing operation to the employees represented by the Sheet Metal Workers and, in December 1981, entered into an agreement with the Sheet Metal Workers to that effect.¹

In a telephone conversation on or about March 12, 1982, the business manager of the Sheet Metal Workers notified the Employer that in the event the finned tube operation was transferred to the Electrical Workers he would pull the men out of the shop. The Employer thereafter filed the charge in this proceeding.

B. The Work in Dispute

The specific work in dispute is the setup and operation of machinery used in the fabrication and assembly of finned tubes.

C. The Positions of the Parties

The Employer contends that the work in dispute should be awarded to its employees who are represented by the Sheet Metal Workers. It contends that the proximity of the sheet metal foreman's

¹ The ratification date for both the Sheet Metal Workers and the Electrical Workers collective-bargaining agreements with the Employer is October 7, 1981. Neither contract specifically addresses the issue of this disputed work.

office to the finned tube machinery contributes to efficiency of operation, that the sheet metal workers currently performing the work are familiar with the operation, that the sheet metal workers' foremen are adept in setting up and operating all the equipment involved, that similar work is performed within the plant by sheet metal workers, and that using sheet metal workers is more economical relative to using electrical workers.

The Electrical Workers contends that the work in dispute should be awarded to employees represented by it on the basis of its collective-bargaining agreement, that the work in question is production work rather than sheet metal work, and that its members possess the minimal skills necessary for the performance of the disputed work.

The Sheet Metal Workers contends that the work in dispute should be awarded to employees represented by it based on the similarity of this work to other work performed for this Employer by sheet metal workers, company preference, economy and efficiency of operation, and the lack of any job displacement as a result of the assignment of the disputed work.

D. Applicability of the Statute

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated, and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

The parties stipulated that the Sheet Metal Workers representative threatened economic action, i.e., "to pull his men out of the shop," to protect its claim to the disputed work. The record also is clear that the parties were unable voluntarily to reach accord as to the appropriate assignment of the work. There is no agreed-upon method of adjustment of the dispute.

On the basis of the entire record, we conclude that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there existed no agreed-upon method for the voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that this dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after

giving due consideration to various factors.² The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.³

The following factors are relevant in making the determination of the dispute before us:

1. Skills and training

It is undisputed that the employees represented by the Sheet Metal Workers have performed this work since the Employer began production of finned tubes. The production process itself is as follows: First, the copper tube is formed by straightening the copper as it comes off a coil. It is then cut to length and bent in the form of a "U" or in a 90-degree bend. At the same time that the tubes are being formed, a roll of aluminum sheet is fed into a fin press where the aluminum is slit, pressed, punched, and formed into a fin. At the assembly area the fin is slid onto the tube, forming an assembly. The tube is then expanded to tighten the fit of the fins and thereafter swaged back down to its original size. Five employees are needed to perform the various steps involved in this process. The Employer concedes that the only aspect of the finned tube manufacturing process which involves particular skill is the setup of the machinery prior to the actual straightening, cutting, slitting, pressing, punching, etc. The employees performing the setup work are sheet metal workers who have been specially trained in this operation. However, the other employees needed to complete the production functions are not specifically trained individuals, but rather have acquired the ability to carry out the running of the machinery through on-the-job experience since assignment of the work to them was made. The record establishes that employees represented by either Sheet Metal Workers or Electrical Workers could have carried out the production work involved, as described above, with equal skill, safety, and facility.

Aside from the setup man, a sheet metal worker, the other individuals performing the production jobs in dispute are not specially skilled. Therefore, the relative skills factor does not favor awarding the work to the employees represented by either Union.

² *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

³ *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

2. Collective-bargaining agreements

Article I, section 3, of the Sheet Metal Workers contract with the Employer states, "The Company shall assign all sheet metal production and sheet metal maintenance work under this Agreement to employees covered by this Agreement." The Electrical Workers contract with the Employer does not address the issue of work jurisdiction. Neither collective-bargaining agreement mentions the finned tube assembly operation.

The Electrical Workers maintains that the work in question is not strictly sheet metal production work and, therefore, falls outside the description of the Sheet Metal Workers contractual jurisdiction. It contends that the work involved is comparable to other production and maintenance work that its members perform, under the general "production and maintenance" category.

The record indicates that employees who are members of both Unions perform similar punch press jobs throughout the Employer's facility. The types of work done in the Employer's operation include a number of jobs which do not fall squarely within the contemplation of either Union's traditional expertise, and the practice of the parties to the dispute does not present a clearly legitimate claim by either Union. Accordingly, we find that the factor of the collective-bargaining contracts does not favor an assignment to the employees represented by either Union.

3. Economy and efficiency of operations

The machinery used in the production of finned tubes is located within view of the sheet metal foreman's office and very near to the door through which incoming materials arrive. The Employer emphasized that the finned tube production machinery's accessibility to both of these areas was determinative of its placement.

The sheet metal foreman oversees the entire finned tube assembly operation. He was chosen for this responsibility (prior to the assignment of the work to the sheet metal workers) because he had extensive training in the finned tube production process and was involved in determining the specifications of the production machinery ordered by the Employer. He also worked along with the industrial engineer in setting up the machinery when it arrived. The Employer's assignment of the work to the sheet metal workers was largely due to its belief that ease of operation could be achieved by having a sheet metal foreman oversee sheet metal workers in the performance of this finned tube assembly operation.

The efficiency of the operation favors continuing the work assignment to the sheet metal workers, given the sheet metal foreman's extensive knowledge of and experience with the operation and the greater likelihood that the work would proceed more smoothly by his working with other sheet metal workers rather than with members of the Electrical Workers.

4. Employer assignment and preference

As set forth above, the Employer made the assignment to the sheet metal workers primarily because of the perceived efficiency and continuity gained by having a sheet metal worker foreman oversee sheet metal worker production employees. These employees have been performing the disputed work and are producing the finned tubes at an acceptable level of efficiency. This would be disrupted by taking them off the job and retraining electrical workers to perform the work. The record indicates that it would take approximately a month for a new employee crew to achieve the current output level. This factor clearly favors assignment of the work to employees represented by the Sheet Metal Workers Union.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors, we conclude that employees who are represented by the Sheet Metal Workers are entitled to perform the work in dispute at the Employer's Cranford, New Jersey, facility. We reach this conclusion relying on the factors of economy and efficiency of operations and employer assignment and preference. In making this determination, we are awarding the work in dispute to employees who are represented by Local 172, Sheet Metal Workers International Association, AFL-CIO, but not to that Union or its members. This determination is limited to the particular controversy which gave rise to this dispute.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing facts and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

Employees of The Wing Company, Division of Wing Industries, Inc., who are represented by Local 172, Sheet Metal Workers International Association, AFL-CIO, are entitled to perform the work involved in setting up and operating the machinery used in the fabrication and assembly of finned tubes at the Employer's Cranford, New Jersey, facility.